

Appeal No. 2023-1922

**UNITED STATES COURT OF APPEALS FOR THE FEDERAL
CIRCUIT**

BEARBOX LLC, AUSTIN STORMS,

Plaintiffs - Appellants,

v.

LANCIUM LLC, MICHAEL T. MCNAMARA, RAYMOND E. CLINE, JR.,

Defendants - Appellees.

Appeal from the United States District Court for the District of Delaware in Case
No. 1:21-cv-00534, Judge Gregory B. Williams

**RESPONSE TO MOTION OF PLAINTIFFS-APPELLANTS FOR A 35-DAY
EXTENSION OF TIME TO FILE THE PRINCIPAL BRIEF**

Defendants-Appellees Lancium LLC, Michael T. McNamara, and Raymond E. Cline, Jr. (collectively, “Lancium”) respectfully oppose the Motion of Plaintiffs-Appellants (collectively, “BearBox”) for a 35-Day Extension of Time to File the Principal Brief for Plaintiffs-Appellants (the “Motion”) because good cause does not exist for the requested extension.

On April 5, 2023, the District Court entered final judgment, which BearBox now appeals, on rulings that were issued between February 2, 2022 and March 6, 2023. The prior rulings were as follows:

On February 2, 2022, the District Court issued an Order (D.I. 97), adopting a Report and Recommendation issued on January 18, 2022 (D.I. 92), dismissing with prejudice Count V (negligent misrepresentation) of Plaintiffs’ Amended Complaint (D.I. 19);

On April 25, 2022, the District Court issued a Minute Entry striking Count III and Count IV of the SAC, which alleged claims of trade secret misappropriation against Defendants

On October 7, 2022, the District Court issued a Memorandum Opinion (D.I. 212) and Order (D.I. 213), adopting a Report and Recommendation issued on May 26, 2022 (D.I. 143), dismissing with prejudice Count VI of the SAC alleging unjust enrichment against Defendants;

On November 14, 2022 the District Court issued a Memorandum Opinion (D.I. 230) and Order (D.I. 231) granting summary judgment in favor of Defendants and against Plaintiffs on Count V of the SAC alleging conversion against Defendants; and

On March 6, 2023, the District Court issued a post-trial Opinion (D.I. 262) and Order (D.I. 263), finding in favor of Defendants and against Plaintiffs on Count I and Count II of Plaintiffs' Second Amended Complaint (D.I. 103) (the "SAC"), which alleged claims seeking to correct inventorship for U.S. Patent No. 10,608,433 to name Austin Storms as the sole or a joint inventor of the patent.

On the 29th day following entry of the Final Judgment, BearBox filed its Notice of Appeal. (D.I.274.) By the time it is due on July 21, 2023, BearBox will have had a minimum of four-and-a-half months to consider its grounds and prepare its brief on the last Counts decided against it and up to seventeen months to consider and prepare for any appeal on the earliest Counts decided against it.

Under Federal Circuit Rule 26(b)(3) a request for an extension of more than fourteen days must be accompanied by a declaration "showing good cause for the extension." Fed. Cir. R. 26(b)(3). BearBox's Motion and the accompanying Declaration of Benjamin T. Horton (the "Horton Declaration") do not show good cause for the requested 35-day extension on top of the time BearBox has already

had. The Horton Declaration identifies only non-specific but normal workload activities by Mr. Horton and a one-week vacation ending two weeks before BearBox's principal brief is due. Neither the Motion nor the Horton Declaration identify any basis for the extension relating to the other three attorneys that have filed appearances other than non-specific "competing demands, both professional and personal, throughout July and August." Horton Decl. at ¶ 8. This does not constitute good cause.

Additionally, BearBox has not addressed why a 14-day extension, which Lancium advised it would not oppose provided BearBox would not oppose a corresponding 14-day extension of Lancium's response brief deadline, is not sufficient.

For these reasons, the Motion should be denied.

Date: July 3, 2023

s/ Adam M. Kaufmann

Mark Christopher Nelson
Barnes & Thornburg LLP
2121 North Pearl Street, Suite 700
Dallas, TX 75201
Direct: 214-258-4140
Email: mark.nelson@btlaw.com

Adam M. Kaufmann
Barnes & Thornburg LLP
One North Wacker Drive, Suite 4400
Chicago, IL 60606
Direct: 312-214-8319
Email: adam.kaufmann@btlaw.com

Chad S.C. Stover
Barnes & Thornburg LLP
222 Delaware Avenue, Suite 1200
Wilmington, DE 19801
Direct: 302-300-3474
Email: chad.stover@btlaw.com

*Counsel for Defendants-Appellees
Lancium LLC, Michael T. McNamara,
Raymond E. Cline, Jr.*

FORM 19. Certificate of Compliance with Type-Volume Limitations

Form 19
July 2020

**UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT**

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Case Number: 2023-1922

Short Case Caption: Bearbox LLC v. Lancium LLC

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Date: 07/03/2023

Signature: /s/ Mark C. Nelson

Name: Mark C. Nelson